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# RELATIONS WITH CHINA.

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# SPEECH

DELIVERED IN THE

# SENATE OF THE UNITED STATES

NOVEMBER 2, 1893,

BY

## HON. CUSHMAN K. DAVIS,

OF MINNESOTA,

ON THE

## CHINESE EXCLUSION LEGISLATION.

WASHINGTON.
1893.


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# SPEECH

OF

# HON. CUSHMAN K. DAVIS.

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The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 3687) to amend an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May 5, 1892, the pending question being on the amendment of Mr. SQUIRE—

Mr. DAVIS said:

Mr. PRESIDENT: I submitted yesterday an amendment to the pending bill. With a desire to perfect the amendment I send to the desk a supplement to that amendment, which I ask to have read.

The VICE-PRESIDENT. The Secretary will read as requested.

The SECRETARY. Add to the amendment of Mr. DAVIS:

That that certain act entitled "An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882,'" approved July 5, 1884, be, and the same is hereby, reënacted, and that such act thus reënacted shall continue in force until the expiration of ten years after the passage of this act.

Mr. DAVIS. Mr. President, it is certainly unfortunate for every interest involved in the pending bill that its final consideration or even its discussion should be pressed at the present time. It is perfectly manifest that full discussion can not now be had upon it. It is very doubtful whether it can be passed in the present state of the attendance of the Senate. It is a momentous and far-reaching measure, one which has appealed to the conscience of the country and excited everywhere a great deal of comment.

We have just passed through a long and strenuous debate upon one single subject. We have enacted the most important financial legislation that Congress has ever passed. The public mind and the minds of Senators have been strained under the tension of this extraordinary session. Both sides of the gold and silver shield have been repeatedly struck by champions here and elsewhere, and the country has resounded with the clangor. We are approaching the end of the session. The time of adjournment is fixed, and I repeat, that to bring forward a measure of this importance, involving public duty and personal right to the extent that it does, is most unfortunate, because it can not result in adequate debate or full deliberation.

Mr. President, our relations with the Empire of China have for many years been of the most perplexing character. The treaty commonly known as the Burlingame treaty, negotiated in 1868, was concluded at a time in our history when the American people had the most effusive ideas in regard to the equality of individuals and the parity of the personal elements of which nations are composed. We were then going through the experiment of adopting the constitutional amendments whereby we in-



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troduced as an operative factor into our body politic a race generically different from our own; and we are now endeavoring to adjust that experiment to existing and permanent conditions.

The Burlingame treaty was considered to be a great act of diplomacy. It was thought that it would be followed by consequences of wide philanthropy and universal brotherhood. Its immediate results were, no doubt, most beneficial to the Pacific States. A new influx of laborers poured the efforts of their industry into every situation demanding employment. They built the Central Pacific Railroad. They opened in California its fields of wheat, its orchards and vineyards. But time went on and it was discovered (and nobody I know of entirely dissents from this view) that probably the whole experiment was of an undesirable and doubtful character.

Mr. President, I do not wish to be for a moment misapprehended in regard to my own position, if that is of any importance to anybody but myself. I am as much opposed as my friend from California [Mr. PERKINS] to the immigration of Chinese laborers. I do not want to see this element grow in our country. I wish to see it steadily diminished in efficacy and in numbers until it shall cease to exist. But what I object to, and concerning which I have the clearest convictions of my duty, is the manner in which it is proposed to depopulate the country of those people.

As I have said, the Burlingame treaty became unsatisfactory; and it was proposed about the year 1880 by this Government that the vast and generous terms of that convention, by which Chinese were permitted to come to this country *ad libitum*, should be modified by treaty stipulations of a new and restricted character. Accordingly the treaty of 1880 was concluded between the two governments, which in substance provided (I shall not attempt to state statutes or treaties literally) that whenever in the opinion of the United States injurious effects are threatened or caused by the coming of Chinese laborers to the United States, or their residence therein, such coming or residence may be regulated, limited, or suspended, but not absolutely prohibited; that the limitation or suspension shall be reasonable and shall apply only to laborers, and immigrants shall not be subject to personal maltreatment or abuse. That is the essence of that treaty so far as the immigration of laborers is concerned.

Within four years after its ratification, and in the due course of legislation two acts of Congress were passed, the act of 1882 and the act of 1884, designed to carry into effect the stipulation of the convention to which I have just alluded. Without going into that legislation with any degree of particularity (for, as I have said, it is not my purpose to do so at any stage of this discussion) it must be sufficient to say that those statutes, by an elaborate system of registration and certificates, plainly sufficient, I think, and certainly sufficient when supplemented by such regulations as the Treasury Department had full authority to make, were adequate to carry out the treaty stipulations and to prevent the evil which was to be apprehended.

But that, Mr. President, was not deemed sufficient. Other treaty stipulations were demanded on the part of our Government. Accordingly in the year 1888 another convention still more restrictive in its character in the particulars upon which I am talking was concluded between the Empire of China and the United States. In anticipation of the ratification of that treaty

the act of September 13, 1888, was passed by Congress, concerning which it is sufficient to say that substantially the terms of that treaty were written into the act for the purpose of making it efficacious and operative. But while this was being done we were on the eve of another Presidential election, and that conscienceless party spirit, concerning which neither the Democratic nor the Republican party has any particular right to reproach the other, was put at work to bid for political support in the Pacific States.

Accordingly, early in October, 1888, what is commonly known as the Scott bill was passed, by which, in abrogation of the terms of the treaty of 1880, the right of the Chinese to come into this country was very much limited, and certificates, some twenty thousand in number, I have been told, which were outstanding under the operations of the treaty of 1880 and the act of 1882 and the act of 1884, held by thousands of people who had gone to China under the sanctity of that legislation and that treaty, were absolutely canceled and nullified. The Senate Committee on Foreign Relations wrote the words of the Scott act into the treaty when it had it under consideration, and added to the treaty which had been negotiated these stringent and violative provisions, and in that shape it was advised and consented to by the Senate. Those modifications were telegraphed to China, where the convention was being considered; the treaty broke down, and it never has been heard of since.

Mr. DOLPH. Will the Senator allow me to make a suggestion? I do not think the amendments made by the Senate in the treaty of 1888 were at all material or that China ever signified that they would not be satisfactory to the Chinese Government. They were satisfactory to the Chinese minister here as a matter of fact. I do not understand that the treaty of 1888 was ever rejected by the Chinese Government. It had not been acted upon at the time the Scott act was passed, and of course it would not be acted upon after the passage of that act. The act of September 13, 1888, was to take effect only when the Chinese Government ratified the treaty of 1888, but before the Chinese Government had acted upon it, or our Government was notified that they had rejected or disapproved or refused to ratify the treaty, the Scott act approved October 1, 1888, was passed, and of course after that the treaty fell; but I think it failed on account of the Scott act, and not on account of any obnoxious provisions added to the treaty of 1888.

Mr. DAVIS. Mr. President, I think I speak advisedly upon this subject. A large part of the information from which I have spoken as to the fate of the negotiations of 1888 was derived from some remarks made by the Senator from Alabama [Mr. MORGAN], now chairman of the Committee on Foreign Relations, in 1892, in this body, when the act of 1892 was under consideration.

In that state of things, another Presidential canvass supervening, the act of 1892 was passed, of which, or of some portions of which, the pending measure is an amendment. Now, distinctly stating my position in this matter, it is this, and such are the object and scope of the amendments I have sent to the desk: I am in favor of carrying out the provisions of the treaty of 1880. I wish to restore to operation the act of 1884, amendatory of the act of 1882, and I am opposed, upon what I conceive to be the highest considerations, to any of the legislation which has been enacted since that time and which is now oper-

ative. I am especially opposed to the act of 1892, the amendment to which is now before us for consideration, and it is that act and its practical operations to which I intend to direct the greater portion of my remarks.

Up to a certain time, namely, up to the time when the obnoxious legislation to which I have alluded became operative, the policy of this country through its statutes in the execution of the treaty was to regulate, control, and prevent the coming into this country of those Chinese who were not entitled to come; but, in abrogation of the treaty, in amendment and repeal of those statutes enacted to carry it out, that purpose has been enlarged so that, say what you may of the devices and pretexts and glosses to which this legislation has been subjected, the actual object is to drive from this country by a system of legislation, which is the scandal and disgrace of our time, those who came here by our invitation, and whose right to remain here is guarantied not only by treaty obligations, but by statutes efficacious and in force up to a recent time.

The act of 1892, the most stringent and the most advanced legislation to that end, and which I shall analyze at some length hereafter, with all of its prohibitory and severe provisions, its processes without law, its total disregard of personal security, liberty, or right, has been declared to be constitutional by the Supreme Court of the United States. Against that decision I have no argument to make. It is the declared and established law. I shall not be led to discuss its soundness, for no discussion here can impair its validity. It is declarative of the powers of this Government in a field in which it has not trodden for nearly one hundred years. I may be permitted to say that the decision of the court took the great majority of the profession of this country, so far as I can learn, by surprise.

But, Mr. President, the decision of the Supreme Court of the United States simply declares the law and the limitations of the Constitution. It says what may or may not be done. That tribunal outlines no policy, and its conclusion upon the validity of a statute is not even a monition to Congress as to the proper method of exercising its political and administrative powers within their unquestioned limits. That court has decided that there resides in the other departments of the Government a power vast, ill defined, susceptible of abuse, liable to be perverted to purposes of passion. For that very reason I call for a revision of the statutes by which that political and administrative power has been put into operation.

The Supreme Court of the United States in substance has decided that, so far as the Chinese in this country are concerned, the question of their disposition, remaining here, deportation, exile, banishment, punishment, whatever you may call it, is entirely and exclusively a matter of political administration; that no sanction of personal right—such personal rights as are enjoyed by us—can be invoked by them in the courts for their protection.

Formerly there was a vague and general idea concerning the execution of this law, that somewhere, somehow, by certiorari, writ of error, habeas corpus, or in some way, rights abused, or rights misused, or wrongs perpetrated, could be rectified by the courts in proceedings under this statute. But that is not to be. Hence, since the judiciary has closed its doors to this class of people, especially to those who have been invited to come here and are in this country under the charter and letters-patent of

a treaty of the United States with their Government, if we wish to get rid of them by administrative and executive procedure we should do it by methods warranted by humanity, and the more so because the power which has been vested in the political department of this Government is so irresponsible and uncontrollable.

I wish to call attention to the provisions of the act of May 5, 1892, and of the amendment now pending to that act for the purpose of emphasizing in a more particular way the objections which I think are valid against the expediency of this legislation. My objections, in my opinion, are stronger for the simple reason that the political powers granted by the statute have been decided to be absolutely uncontrollable by the judiciary, and are vested entirely in the unregulated discretion of the executive officers of the Government. Take the second section of the act of 1892:

That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China—

"When convicted or adjudged." Note the judicial phraseology as to matters which have been held not to be judicial—

unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country.

Here is a man brought before a judge, magistrate, or commissioner. He is charged with the offense of being unlawfully in this country. Every presumption with which the common law surrounds an accused person, that he is innocent until he is proven guilty, is studiously by statute taken away. He must make it appear to the magistrate that he is a citizen of another country, in which case he shall be deported to that country. Then notice what follows:

*Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

Now, I have to say generally in respect to that proviso that we have undertaken to deport Chinese to other countries than China, with which we have treaty stipulations, giving to their citizens the right to come and go and live here upon the same terms that we have given the most favored nation. In case a Chinese happens to be a citizen of another country than China, we have undertaken to deport him to that country of which he may claim and prove himself to be a citizen. In the anxiety to get rid of these people the framers of the legislation of 1892, while they repudiated our treaty obligations with China, were not careful of our obligations to other countries. Absolute is the provision that when the Chinese is convicted and adjudged to be unlawfully here, when by treaty with Great Britain he had a right to be here, if he was a subject of that country, he shall be deported to Great Britain, or such other country of which he may be a subject, raising at once questions between us and other nations with whom we have no interest or desire to be entangled in any such controversy.

But the proviso adds an iniquity to that to which I have just called the attention of the Senate. It provides in substance that if the other country of which the Chinese has established him-

self to be a citizen lays any tax or head money upon him, he shall be deported—where? Not to the country to which he owes allegiance, but he shall be deported to China, a realm which he has abjured; that he shall be banished to the country from which he originally came. What will be the effect? Great Britain acquired Hongkong in 1841. It is an island off the coast of China, and contains about 25 square miles. It has about 220,000 people. Every Chinese born in Hongkong since the acquisition of that island by the British Government is a subject of Great Britain, and it is said (I know not with how much accuracy, though to a certain degree it must be true) that a large part of the Chinese immigration to the United States has come from Hongkong, so that in this respect we deal, or propose to deal, not only with the Empire of China, but with Great Britain or other countries with whom Chinese may have, and doubtless have, assumed the relations of citizenship.

Passing on to section 3:

That any Chinese person or person of Chinese descent arrested under the provision of this act or the acts hereby extended shall be adjudged—

Note the judicial phraseology—

to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

Now, that measure of proof applies not only to deportation proceedings but to criminal proceedings, strictly defined to be such in the body of the act, whereby sentence is to follow judicial proceedings. Whoever heard, whoever saw, in any other legislation than this, that a man accused of that which is in substance a crime, of which he must be convicted by some process or other, shall be adjudged guilty unless he shall affirmatively prove by a preponderance of testimony sufficient to remove the legal presumption of guilt, that he is an innocent man? There is no such law elsewhere in Christendom, and it would disgrace Morocco.

SEC. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.

Mr. WHITE of California. The Senator is aware, I presume, that that section has been declared invalid. That section has been eliminated from the act.

Mr. DAVIS. I am carrying out my argument to show the animus of this legislation. The animus with which the act was drawn was that under section 3, when a Chinese person was accused he must prove his innocence, and if he did not prove it he should be imprisoned for one year at hard labor and afterwards be deported to the place from whence he came.

Mr. DOLPH. Imprisoned not exceeding one year. He might not be imprisoned for an hour.

Mr. DAVIS. Not exceeding one year. Section 5 provides:

That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay.

Mr. President, we have all been brought up to consider, whether as to ourselves to the manner born, or as to aliens or denizens, that the great shield of the writ of habeas corpus was always over all. So dear is personal liberty in our political con-

ceptions that the distinction of the right to that writ had never been drawn as against an alien prior to this legislation. Here he is seized, arrested, detained.

Mr. DOLPH. No; that is while still aboard ship.

Mr. DAVIS. While still aboard ship, but he is detained there; he can not get off; he is restrained of the liberty of his person; he can not have the benefit of the writ of habeas corpus, even to enable him to go ashore and prepare for his defense. But what is the use of particularizing and stigmatizing in detail a deprivation by a statute of rights so comprehensive and disgraceful as this is?

I now come to an examination of section 6, and the proposed amendment under present consideration, which mainly is concerned with the substantial reënactment (with some few immaterial variations) of section 6 of the act of 1892. Bear in mind that the treaty of 1880 had provided that certain laborers who were here at a certain time should be permitted to remain in this country; that its whole scope, and all that was asked then, was to restrict the further influx of immigrants of that character. Bearing all that in mind, let us consider the provision of the proposed amendment. It is nearly identical with section 6 in the statute of 1892:

SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States, at the time of the passage of this act, and who were entitled to remain in the United States——

Mr. PLATT. Who are entitled to remain?

Mr. DAVIS. "Who were entitled to remain in the United States" before the passage of the act to which this is an amendment.

Mr. PLATT. Who does the Senator understand were entitled to remain?

Mr. DAVIS. That enters into a branch of detail I do not care to be questioned about just now, but I merely ask the attention of the Senate to the general fact that unblushingly and avowedly the act proposes to proceed against people who up to a certain time were entitled to remain within this country. It shall be the duty of such Chinese laborers "to apply to the collector of internal revenue of their respective districts, within six months after the passage of this act, for a certificate of residence."

His duty is to apply to the collector. I pause to remark, in criticism of that particular provision, that nowhere within the compass of this amendment, or of any legislation of which it is amendatory, is it made the duty of the collector to give the Chinese person a certificate. At the very beginning of this proceeding an inferior executive officer of the United States is to be applied to. His discretion merely is to be applied to. His judgment is final. There is no appeal in case of his refusal to grant a certificate, however the Chinese may be prepared to show clearly his right to be here; and with the state of feeling in those parts of the country which assert themselves to be most deeply affected and injured by the presence of this population, I ask, taking into account the average performances of human nature, what kind of a show the Chinese is going to have with the collector to whom he applies? Suppose he does apply. "I will not grant your certificate." Then he passes, abandoning all hope, under all of the penal provisions of the law, and can not possibly reinstate himself.

Mr. GRAY. I ask the Senator from Minnesota, if he will per-

mit me, whether, notwithstanding the looseness of the framing of the original Geary act, so-called, he does not think that there is an implication of duty arising from the structure of the section upon the collector to give the certificate when it is applied for?

Mr. DAVIS. It is enough for my purpose to say that I do not believe such a discretion ought to be confided to the collector.

Mr. GRAY. I do not think so either. I only ask the Senator if he does not think there is an implication of duty.

Mr. DAVIS. Certainly my esteemed friend thinks so; but what I am talking about is the logical consequence. Supposing the implied duty of which the Senator speaks and which may exist here is not performed, where is the remedy for the Chinese, however clear his claim may be?

Mr. GRAY. There is a remedy of mandamus, I should think, where there is a duty implied.

Mr. DAVIS. I am talking about the practical working of this business. Mandamus can not control or overrule the exercise of discretionary power by any public officer. I am trying to convince the Senate that this is a matter which ought not to be precipitately or inconsiderately decided; and that this whole question ought to be again referred to the Committee on Foreign Relations with a view that some legislation adequate to the subject, and at the same time just, can be formulated—

and any Chinese laborer, within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged—

Note the judicial and forensic language again—

to be unlawfully within the United States, and may be arrested by any United States customs official—

Whoever he may be—

collector of internal revenue or his deputies, United States marshal or his deputies.

Consider for a moment, Mr. President, such legislation as this, applicable to 106,000 people, in the enjoyment of the right to personal liberty and domicile in the midst of a hostile race, by as solemn a treaty as this Government ever concluded, by which they are turned over to be taken bodily in a man-hunt by any one of the officers or their numerous deputies, of the character described in the sentence which I have just read. What a source of abuse! What a weapon of violence! What an instrument of extortion and oppression and bribery!

Any wandering deputy marshal, or collector, or anybody who can be called an official in the United States customs department anywhere in this country, can lay his hand upon a human being without a warrant or precept. No court supervises him, no controlling authority holds the reins over him. It is a matter entirely between the man-hunter and his victim. If he lets him go for a consideration there is nobody in particular to call him to account.

This, be it ever remembered, is not a judicial proceeding. This is the exercise of political power, and to exercise this political power we propose to vest in a body of people in no way connected with the courts (at least two-thirds of them are not), a power which if it were invoked in Great Britain to-day in regard to any person, subject, or denizen, within the island, would shake

the foundation of that Government so that it would topple to its fall.

When people are to be deprived of their liberty, when they are to be detained, when they are to be convicted, when they are to suffer the extreme punishment of banishment, and that through the action of a judge, as in this case, although he acts not judicially but politically, all experience shows, and all civilized legislation provides, that to authorize one man to arrest another he ought to have a warrant for that arrest and detention. It is under the seal of the court. The hand of the court is upon its officer. He must produce his man before the judge, or magistrate, or court which issues the warrant. For any irregularity in the arrest the prisoner can make complaint. But here is no warrant at all. The mere fact that a man is a Chinese authorizes any one of these deputies or officials to demand his certificate, and if he does not immediately show it, to lay hands upon him and dispose of him in the manner which I shall indicate.

Mr. PALMER. Will the Senator from Minnesota allow me to supplement his remark? It is not necessary that the man should even be a Chinese. It would be quite sufficient that these irresponsible officers supposed him to be one.

Mr. DAVIS. That is probably true.

Mr. WHITE of California. Would the judge deport him then?

Mr. DAVIS. Now, after the kidnaping proceeding this follows: The apprehended man is—

to be taken before a United States judge.

What judge? Where? Of the district where the man is seized? Naturally so, but the statute does not say so. A Chinese person seized in Oregon can be taken to California and *vice versa*, or he can be taken to the city of New York—

whose duty it shall be to order that he be deported from the United States as provided in this act and in the act to which this is an amendment, unless he shall establish clearly—

Note the burden of proof—

to the satisfaction of said judge, that by reason of accident, sickness, or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the 5th of May, 1892.

I was very much pleased to hear the criticisms of the venerable Senator from Illinois [Mr. PALMER] on this subject.

Section 6 of the act of 1892 provides that there should be "one credible *white* witness." The thing has been transformed but has not been materially changed in the eye of justice in the amendment which I hold in my hand. He must establish it—

By at least one credible witness *other than Chinese.*

Little by little all civilized nations have adopted an axiomatic law of evidence that the testimony of any man can be heard when it is given under the sanctions and ceremonies of his religion, or upon his conscience if he has no religious belief respecting the sanctity of an oath. All experience, all philosophic jurisprudence here where the common law obtains, and elsewhere in countries where the civil law prevails, has settled down upon the conclusion that the objections to a witness go only to his credibility. All systems of law will hear his story; will weigh the facts and circumstances; will confront him with other witnesses; will measure his story by other competent evidence. But under this statute the Chinese can not be heard

for the purpose of establishing his most inestimable rights. He can not establish by the testimony of one Chinese witness, or ten or twenty Chinese witnesses, that he has complied or is entitled to comply with the provisions of this law.

Now, it may be, it naturally would be among this peculiar people, that the only sources of proof which must thus be furnished clearly to the satisfaction of the judge are among their own people. They are not to be heard for the purpose of plenary proof, or heard at all. The accused may have drifted to New York or to St. Paul, having a companion there who has known him, when there is not a white man within 2,000 or 4,000 miles who could give the least attestation concerning him.

He is seized in New York or in St. Paul; he is taken before a United States judge, brought there without a warrant, by an underling without any authority except his official connection with another department than that concerned in the administration of justice; and in such case as that which I have supposed the Chinese is utterly remediless by the simple automatic operation of a law, and he immediately goes under the yoke of the penal provisions of this statute.

And if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

That is a touch of meanness which speaks for itself.

Should it appear that said Chinaman had procured a certificate, which has been lost or destroyed——

Mr. PLATT. What cost?

Mr. DAVIS. It does not say what cost. The question forcibly illustrates the powers of oppression of which this act is susceptible.

Now, about this Chinese testimony, which I was about to depart from without suggesting another consideration which had occurred to me. Here is a Chinese person before a judge, deprived perchance of the only testimony by which he can establish his right. The scene is a United States court room. The proceedings of a criminal trial are suspended for a moment to enable the judge to cease to be a judge and to perform this act of political administration. It is over. The trial of a person, white man or Chinese, accused of felony against a law of the United States is resumed, and this same Chinese, whose testimony and the bystanders of his nationality whose testimony has been rejected by the judge in his capacity of a political administrator by the force of this statute, happen to know all about the crime of the culprit who is upon trial. The United States law puts these same Chinese witnesses into the box to prove the allegation of an indictment in a trial against a white man. The testimony is received, and if it is credible, conviction and sentence of imprisonment, or perhaps of death, follow. Who will say that this statute was not designed for oppression, that it was not written by a cunning hand for the purpose of making possible and lawful a perverted and cruel use of political power. It takes a man cunningly beyond the reach of the protection of the courts, and turns him over to the tender mercies of what little he can get out of such provisions as this:

He shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court.

And any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

Then follows section 2, containing certain definitions as to laborers. I do not know that I have any particular fault with that definition, but as to merchants I will read:

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

One would naturally suppose that the vocation of a man who had been a merchant in the ordinary sense of the word, is something which the community in which he deals could testify to; but there is one particular provision in this definition concerning which I speak with considerable diffidence, namely, that he must do business in his own name. My reading has informed me, and conversation has instructed me, that of all people in the world the Chinese are an associative people in their business operations; that they have carried the ideas of companies and corporations and associations to a degree of refinement and perfection to which we have not approached, and yet under this provision, as to all the men who may belong to an association of that character who have pooled their stocks, capital, and profits as merchants and importers, invited to this country by treaty and confirmed by statute, they are absolutely deprived of the right of enjoying those business relations and can not exempt themselves from the punitory and pursuing clauses of this act, which follows them into every portion of this land and makes them liable to have the hand of numerous officials placed upon them without precept, warrant, or authority of law except as derived from this statute.

Mr. PLATT. He can not cut his own wood.

Mr. DAVIS. The Senator from Connecticut remarks that he can not cut his own wood except it is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

This whole proposed law is *ex post facto*, if that term can be applied to a proceeding which is not judicial, but political and administrative. Penalties are enacted which had no existence whatever in common law, statute law, or in legal contemplation of any kind, until the act of 1892 called them into being, and they deprive the Chinese of a legal status which was perfectly unassailable before those penalties were enacted.

How is this class of offenses contrived and created under the general right of the Government to say what it shall do with aliens in its midst, concerning which the Supreme Court has settled the doctrine for the present, at least? A man is required to do something which he was never required to do before, to register, to take out a certificate. He does not do it. His refusal creates the crime. It creates the crime, and the crime produces the penalty.

I find it hard to use language accurately here; but after all has been said and done it results that this crime and this penalty are not justiciable matters; they are matters of political and

executive concern. After the studious use of judicial and forensic language thoughout this statute, and the invocation into this arena (for it is not a forum) of United States judges for its execution, we are told, and told conclusively by the Supreme Court of the United States, that it is not a judicial, is not a criminal, is not a penal proceeding at all, but that all these consequences, from arrest down to conviction and execution of the sentence, are purely matters of political administration.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail.

I was going to say he might want to appeal. He can not appeal. The proceeding is not judicial. It is political and administrative. He might want to give bail, but he can not do it. That is cut off. Bail is judicial. Political administration knows it not. Even while invoking the interposition of the superior officers of the Treasury or of the President of the United States the Chinese merchant who has come to this country must be detained; he can not be admitted to bail.

Mr. GRAY. He can have a writ of habeas corpus, though.

Mr. DAVIS. I am not so certain about anything good in this act. I should want to examine it closely before I concede even that point to a gentleman so frank as my friend from Delaware.

Mr. GRAY. I am trying to find something good in it.

Mr. DAVIS. The provision of the bill is:

The certificate herein provided for shall contain the photograph of the applicant, together with his name, local residence, and occupation, and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States collector of internal revenue of the district in which such Chinaman makes application.

Such photographs in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of the Treasury

That is a matter of detail. I do not think it particular oppressive. I have a repugnance to calling upon any man within the protection of the law for his photograph to be filed away as a basis for a possible criminal prosecution or even for his protection. We call such collections of photographs in civilized and judicial life by a particular name.

Mr. PERKINS. They were at the World's Fair.

Mr. DAVIS. Yes, I have no doubt. We invited the Chinese to the World's Fair. China came with the meekness she has always shown, even when we tried to abrogate the treaty, and in the face of all this scandalous legislation she shamed us by a magnificent exhibition.

Mr. PERKINS. They had to have their photographs, though.

Mr. DAVIS. I do not recollect any statute to that effect.

Mr. PERKINS. It was a regulation.

Mr. DAVIS. I do not recollect any statute of the United States to that effect.

Mr. WHITE of California. There is no statute.

Mr. DAVIS. Now, Mr. President, from the decision of the Supreme Court of the United States respecting the action of the judge in executing this statute, it plainly follows that such action by him is not judicial but is political and administrative. He does not proceed upon precept, complaint, indictment, or by jury, or in court. No judicial record is made of his action. A United States judge is attempted to be transformed into a political, executive, administrative officer. He is translated to a sep-

arate department of the Government. If I were a United States judge I would say "These duties which you have attempted to impose upon me are not judicial, and I shall not perform them." This Government has no power or authority by statute to impose duties of that character upon a judge without his consent. I would rather have been one of those French officials who issued *lettres de cachet* under Louis XIV. I would rather have been one of those self-constituted judges who sat at the entrance of the prisons during the massacres of the French Revolution and adjudged the emancipated captive to life or death as they chose. My friend, the Senator from Connecticut [Mr. HAWLEY], refers me to the fugitive-slave law; but there was judicial process, there was warrant, there was habeas corpus, there was a court and a judge acting judicially. The iniquity of that law was that there was no trial by jury, and it convulsed the conscience of this country. How did Judge Lacombe, the United States circuit judge in the city of New York, dispose of a case of this kind under the act of 1892? He performed the administrative and political duties of his judicial office, but finding that, owing to the imperfections of the act of 1892, no particular officer was authorized to deport the Chinese person and no funds provided for this purpose, he issued an order, ironical, though perhaps not so intended, (I think I can state its substance correctly), that this Chinese can go; he is set at large, to be deported when the United States furnishes the instrumentality for that purpose.

Mr. President, it was nearly one hundred years ago when the only precedent for this legislation found a place on our statute books. During the Administration of John Adams, and in the year 1798, three alien acts were passed, the material part of which was that the President of the United States was given the power to deport any alien who it could be reasonably apprehended was guilty, or intended to be guilty, of treasonable practices or was undesirable as a denizen. It was a war measure, and nobody attempted to justify it by any other pretext. It was designed for "war in procinct," to use the words of Milton. The frigates of the United States had been engaged in battle with the frigates of the French Directory in the West Indian waters, and the privateers of France, under letters of marque and reprisal, were carrying American cargoes into ports for condemnation prize. Three of our envoys who had been at Paris in the endeavor to adjust our very difficult relations with that peculiar government, had been subjected to importunities for money as a bribe by emmissaries of Barras, the voluptuary, and of Talleyrand, that cynical and diplomatic peculator, and they had returned to this country. The people rose in indignation, and Congress granted to the President of the United States the power conferred by the alien acts of 1798. What was the result? The nation rose in protest against the statute. It swept the Republican party (so called) of that day from power, and it gave to their opponents an uninterrupted ascendancy for over twenty years.

In vain John Adams, from his place as President, and from his retirement, protested and proclaimed that the statute was justifiable as a war measure, and justifiable on that ground alone. It produced opinions which have been cardinal as doctrines of constitutional law for many of our most advanced thinkers and statesmen; and I shall beg permission to read what James Madison said. It is refreshing to hear how clearly his voice speaks, as if attuned to-day, from across the interval of nearly a hundred

years, respecting this act, designed as a measure of protection at that time. Mr. Madison wrote:

With respect to alien enemies, no doubt has been intimated as to the Federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and, of course, to treat it and all its members as enemies. With respect to aliens who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of Congress is denied to be constitutional; and it is accordingly against this act that the protest of the General Assembly is expressly and exclusively directed. (Ibid., 554).

Were it admitted, as is contended, that the "act concerning aliens" has for its object, not a penal, but a preventive justice, it would still remain to be proved that it comes within the constitutional power of the Federal legislature; and, if within its power, that the legislature has exercised it in a constitutional manner. * * * But it can never be admitted that the removal of aliens, authorized by the act, is to be considered, not as punishment for an offense, but as a measure of precaution and prevention.

If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a country where he may have formed the most tender connections; where he may have invested his entire property, and acquired property of the real and permanent as well as the movable and temporary kind; where he enjoys, under the laws, a greater share of the blessings of personal security and personal liberty than he can elsewhere hope for; * * * if a banishment of this sort be not a punishment, and among the severest of punishments, it would be difficult to imagine a doom to which the name can be applied. And, if it be a punishment, it will remain to be inquired whether it can be constitutionally inflicted, on mere suspicion, by the single will of the executive magistrate, on persons convicted of no personal offense against the laws of the land, nor involved in any offense against the law of nations, charged on the foreign state of which they are members. (Ibid. 555.)

* * * It does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that, whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws than they are parties to the Constitution. Yet it will not be disputed that as they owe on one hand a temporary obedience they are entitled in return to their protection and advantage. If aliens had no rights under the Constitution, they might not only be banished, but even capitally punished without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried in every part of the United States, that except on charges of treason an alien has, besides all the common privileges, the special one of being tried by a jury of which one-half may be also aliens.

It is said, further, that, by the law and practice of nations, aliens may be removed, at discretion, for offenses against the law of nations; that Congress are authorized to define and punish such offenses; and that to be dangerous to the peace of society is, in aliens, one of those offenses.

The distinction between alien enemies and alien friends is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offenses against it. Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only. (Ibid., 556.)

But I need not read further.

Now, Mr. President, it may be said that the Supreme Court of the United States has overruled some of the constitutional positions thus taken by Mr. Madison; but if it has, it has simply defined our powers; it has not extended them. Because the Supreme Court of the United States has said that there is a region of power limitless in extent open to us, we are not bound to enter it. All things may be lawful to us, but all things are not expedient. Therefore I say, inasmuch as this matter is not judicial, that if we are to proceed at all under this our political, administrative, and executive power to use these terrible instrumentalities of abuse by irresponsible persons, which this law so amply confers upon them, such instrumentalities should be regulated by a statute bringing them within and under judicial control.

The Supreme Court has decided that in no event and under no existing legislation can the Chinese at any stage in the proceeding, whether initiative or as they go on or finally, be brought within

the protection of the judiciary. I have no doubt that it was the general opinion of the profession when the act of 1892 was passed that somewhere in the course of the proceedings the judiciary could lawfully intervene, as it now seems it can not. Hence I am anxious to see this legislation changed in some way so that if immigration from China to this country is to cease (and I confess it seems to me very desirable that it shall) this country shall not scandalize and disgrace itself by such political, arbitrary, and administrative processes as this legislation has been held to warrant.

If a Chinese can be deported, any other aliens can be deported, coming here under the sanction of whatever treaty, however liberal. The country was greatly excited two years ago by the performances of the Mafia at New Orleans, and it was charged and believed that a secret society dedicated to assassination was in our midst. Its members were aliens. Nobody proposed to deport them. Nobody has ever proposed to deport the Italian laborers because, like the Chinese, they come here expecting to return home. They take their wages back with them; they do not pretend to assimilate with our people.

Mr. GRAY. We do not want the Chinese to assimilate.

Mr. DAVIS. Nobody does; and we do not want that kind of Italians to assimilate.

Mr. President, if the Chinese can be made amenable to such discipline as this by refusing to register, they can be made amenable for any other refusal that may result from an astutely framed statute. This being a political matter, a matter of administration, the United States can pass a law that any Chinaman who refuses to conform to the ordinances of San Francisco shall be deported, or that any Chinese person over 45 years of age shall be deported. There is no limitation: the power of this Government is absolute over these people politically and administratively, because the law is a justification unto itself and can not be judicially executed.

Again, if you can proceed, under the decision of the Supreme Court, against all the Chinese in this country, you can proceed, as this act does, in some respects, against a certain class. If you can do that, you can proceed against one Chinese by special legislation of this character. You can enact that certain men, supposed to be members of the Six Companies, shall be deported. If any one should establish a Chinese newspaper in this country, and it was not agreeable, you can enact that any man establishing and editing a Chinese newspaper shall be deported; or any other act or omission, however innocent, however indifferent in the general current of political or social concerns, can be made the standard, and, the law being a justification unto itself, and the merest instrumentality of the executive power of the Government, the Chinese against whom the blow is directed can be deported.

Mr. GRAY. May I ask the Senator from Minnesota whether he thinks that the judgment of the Supreme Court in the late case in which they were called upon to deliver an opinion goes to the extent which he has described?

Mr. DAVIS. I think it does.

Mr. GRAY. In asserting the power of the United States?

Mr. DAVIS. I think it does. There were three writs of habeas corpus, presenting nearly every phase of the question, it seems to me.

Mr. GRAY. I agree with the Senator from Minnesota that the obligations of the Constitution of the United States rest just as heavily upon us as Senators as they do upon the Supreme Court; that the Supreme Court may mark out the area into which legislative power may extend, in their opinion, but it does not relieve the judgment of an individual Senator from the duty of deciding for himself in any given case as to what the Constitution means.

Mr. DAVIS. The Senator from Delaware has expressed my opinion in the most precise and apt manner. That is precisely my view, and upon that I stand, although I differ from the Senator in the argument I am making against this whole body of legislation.

More than that can be done. As I said, if all can be deported, classes can, a dozen can, one can. Unquestionably a statute could be passed ordering the deportation under this decision of every Chinese who, after a period of six months, should be found living within a city of 6,000 people, or within the city of San Francisco, which has been the most complaining, and perhaps justly so, upon this question. The complaint is not, as I understand it, that the Chinese through the country, in the orange groves, the vineyards, and wheat fields and mines are an unmixed evil, but it is their conglomeration in the great city of the coast, at the Golden Gate, that is objected to.

We might under the compendious and universal power which the Supreme Court has confirmed in Congress, pass an act that all Chinese found living in San Francisco shall be subject to deportation. There would be sense and humanity in that, if controlled by judicial processes. It would drive that idle class back home or out into the surrounding country, where, I am informed, laborers of that class are much to be desired and are not too plentiful.

Mr. WHITE of California. The Senator is mistaken in that regard.

Mr. DAVIS. Mr. President, there is no nation on the continent of Europe, however feeble, that we would ever have enacted this legislation against, however undesirable their laboring people as immigrants. Our conscience would not have permitted it, to say nothing of the fear of reprisal or retribution from the other nation. We have a general idea, unhappily too prevalent, that we need not deal with the Chinese upon the same footing of equal binding force and obligation, to say nothing of equality of right, that we deal with other people. Yet, Mr. President, we can not imagine that a nation like China is going to rest forever quietly under these inflictions. She has protested against this legislation from the beginning.

Suppose she should treat our missionaries, those Christian men and women who have erected the cross of the Redeemer throughout that Empire, as we have treated and propose to treat her subjects in this country. The voice of the entire American people would be for war.

China is the most ancient empire in the world. She contains one-fifth of the human race. She was in her prime when the phalanx of the Macedonian stood upon the banks of the Indus, and she saw the Roman Empire fade like an "insubstantial pageant" and "leave not a rack behind." And it is not improbable that she will survive the most stable governments of to-day as mere ephemera in the experience of her existence.

Yet, old and colossal and impenetrable as she has hitherto been, that vast reservoir of wealth, that swarming hive of population has, since the opium war, been slowly yielding to the advances of civilization and throwing open that great market to the world. Yet we, perhaps from passion, perhaps in part to carry out an ill-founded desire, are jeopardizing that commerce for which not only there, but elsewhere, we have been looking intently for many years, trying to build up our American shipping and then to reëstablish and extend our commercial relations with all the countries of the world.

Can anyone suppose that, with legislation of this character, enforced in this way, the American merchant or the American marine are to have eventually their share in that immense and rapidly growing commerce?

Great Britain has no trouble of that kind. She enacts no laws of this character against the Chinese. They go up into British North America and settle there, subject only to head money. I do not know that they have enacted any hostile laws, though I think Australia has.

Mr. WHITE of California. All countries have, except the Fiji Islands.

Mr. DAVIS. I say that the Dominion of Canada has not enacted exclusion laws against the Chinese. Is it not worth while to consider whether means can not be adopted to preserve a good understanding between us and the Chinese Empire, complaisant and yielding as it has always been on this subject of immigration. China does not want its people to come here. It disapproves it. To our objections to their coming among us, the Chinese Empire has always responded according to our desire. As my friend, the junior Senator from California [Mr. PERKINS], said in his very interesting speech of yesterday, their bones are not even permitted to remain here. They are sent back.

What is that commerce? In 1891 the imports into China, reduced as nearly as I can reduce them to our money, amounted to $167,500,000, and the exports were $101,000,000 in round numbers. I mean from all over the globe. Of this Great Britain had by far the largest part, but the authority which I consulted states that the United States comes next. It is a growing commerce. The needs of that innumerable horde of people, when they get to needing what we have to give them, will increase more and more every year, for civilization creates wants which will extend enormously.

The Chinese Government has granted a concession to its own subjects to build a railroad from a city on the coast to Peking, over 1,000 miles, and a railroad is now being constructed from the north coast of the Empire to the boundary line between it and Russia.

Every indication of that kind tends to show that in the slow process of time—and events have always been slow to that people—great advantages are destined to come to the civilized world. Why, then, provoke antagonism? Why build up a wall higher and more impregnable than the Chinese wall was in the old time before the Tartar invasion?

Mr. President, no country in Europe has such legislation as that against which I speak. Deportations of peoples have not been unknown in history, but they have been infrequent. The Spaniards expelled the Moors from Spain. History has written her lines of reprobation over that atrocity, and Spain has

never recovered from it to this day. The edict of Nantes was revoked, and the best and most industrious people in France fled from that kingdom and built up great industries in England; many of them came to South Carolina and formed some of the choicest blood in that State. Russia has expelled the Jews, and how the moral sentiment of the civilized world has risen against the deed! It has provoked the protest of the religious press, the indignation of every tolerant man, and it has unlocked the coffers of charity. The President of the United States saw fit to give to Congress in his message an expression of his disapproval, and he voiced the sentiment of this country. Yet all the time this was going on, we have been legislating and insisting with Pharisaical self-righteousness in regard to the Chinese precisely in the manner in which the autocrat of Russia has been proceeding against the Jews, and for which we reprobated him.

Upon the table of the Secretary lie the protests of some of the best elements of this country, and among them the protests of faculties of universities. We may say in a cynical way, "we shall not regard them; they are not minding their business: they would best attend to their own concerns;" but I tell you that there is a voice in this country which will not be stilled, but which will be heard. We can not afford, no party can afford—and I speak now from no party standpoint whatever—no party can afford to ignore or treat with silent contempt, or pass by such protests as these. That was tried in the days of slavery. It failed, and if public sentiment ever awakens upon this subject we shall not then attempt by these devices and tricks of legislation to accomplish that indirectly which we would not dare to attempt directly.

Opposed as I am to Chinese immigration, wishing to see this evil remedied, let me call attention to another fact.

What is this Mongolian horde that will overrun this country like the hordes of Ghengis Khan? The United States has 65,000,000 people. How many Chinese are there in the United States? One hundred and six thousand according to the last census. There is not a thousand difference between the number who were here in 1890, according to the census, and the number here in 1880. In 1880 the Chinese population of San Francisco was 25,000 in round numbers; in 1890, it was 21,000—a falling off of 4,000. By natural processes this matter is being settled.

Mr. President, I have taken more time than I intended, but the subject is one of large proportions and of infinite complexity the more it is considered.

This is a very small part of the case in opposition to the system of legislation now protested against. Much more might be said of it. Opposed as I am to Chinese immigration, wishing to see the contact of that people with ours cease as soon as possible, I do desire to see expelled from our statute books this flagitious and ferocious legislation which it is proposed to continue and make more efficacious by the amendment to the act of 1892, now under consideration.



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